

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

---

NAVIGATOR HEARTLAND  
GREENWAY, LLC,

Plaintiff,

v.

IOWA UTILITIES BOARD, A DIVISION  
OF THE DEPARTMENT OF COMMERCE,  
STATE OF IOWA,

Defendant.

---

CASE NO. \_\_\_\_\_

**PLAINTIFF’S MOTION FOR  
TEMPORARY AND PRELIMINARY  
INJUNCTION**

COMES NOW the Plaintiff, Navigator Heartland Greenway, LLC (“Navigator”), through its undersigned counsel, hereby submits this Motion for Temporary and Preliminary Injunction, stating in support thereof as follows:

**INTRODUCTION**

Navigator is seeking an injunction pursuant to Iowa Code §§ 22.5 and 22.8 to protect the confidentiality of its mailing lists which were recently requested to be disclosed pursuant to open records requests under the Iowa Open Records Act (the “Act”), Iowa Code chapter 22, submitted to the Iowa Utilities Board (the “IUB” or “Board”) by multiple parties. *See* Iowa Utilities Board, *In re: Navigator Heartland Greenway LLC*, Notice of Records Request, Docket No. HLP-2021-0003 (Aug. 24, 2022). A copy of this Notice of Records Request is attached hereto as Exhibit 1. A temporary injunction should issue immediately and ultimately a permanent injunction preventing such disclosure. Navigator refers the Court to its Petition for Temporary and Permanent Injunctive Relief, along with the Affidavit filed in support thereof, and incorporates those herein by reference.

## **LEGAL STANDARDS**

### **I. Standard for Issuance of a Temporary Injunction**

Pursuant to Rule 1.1502(1) of the Iowa Rules of Civil Procedure, a temporary injunction may be issued when a “petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.” The standards for granting a temporary injunction “are similar to those for permanent injunctions, except temporary injunctions require a showing of the likelihood of success on the merits instead of actual success.” *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001) (citing 42 Am. Jur. 2d Injunctions § 8). Evidence that may not be competent in support of a request for a permanent injunction may be considered on an application for a temporary injunction. *Atlas Mini Storage, Inc. v. First Interstate Bank of Des Moines, N.A.*, 426 N.W.2d 686, 689 (Iowa Ct. App. 1988)

As a general proposition, an injunction is warranted where, like here, it is necessary to prevent irreparable injury and when the plaintiff has no adequate remedy at law. *Hockenberg Equip. Co. v. Hockenberg’s Equip. & Supply Co. of Des Moines*, 510 N.W.2d 153, 158 (Iowa 1993). “Thus, a party requesting injunctive relief must establish ‘(1) an invasion or threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available.’” *Opat v. Ludeking*, 666 N.W.2d 597, 603–04 (Iowa 2003) (quoting *Skow v. Goforth*, 618 N.W.2d 275, 278 (Iowa 2000)). Each of these factors is clearly met and the circumstances of this case warrant the immediate issuance of a temporary injunction preventing disclosure of the mailing lists.

### **II. Standard for Issuance of a Permanent Injunction**

The standards concerning permanent injunctions are generally the same as for a temporary injunction, with the exception of the burden of proof and evidence necessary for an injunction. *See*

*Max 100 L.C.*, 621 N.W.2d at 181. With respect to the burden of proof, temporary injunctions require a showing of the likelihood of success on the merits whereas permanent injunctions require actual success. *Id.* The other important exception concerns the type of evidence that a court may properly consider. Under the Iowa Rules of Civil Procedure, “permanent injunctions are those granted as part of a final judgment, while temporary injunctions are those granted at any prior stage of the proceedings.” *Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985) (citing Iowa R. Civ. P. 1.1501). “Rules of evidence are applied more strictly on final hearing of a cause than on an application for temporary injunction, when evidence that would not be competent to support a perpetual injunction may properly be considered.” *Kleman*, 373 N.W.2d at 95 (citing Iowa R. Civ. P. 1.1502). Ultimately, this Court should also issue a permanent injunction preventing the disclosure of the mailing lists.

## **BACKGROUND**

### **I. Procedural Posture**

Navigator has developed a proposal to build and operate a large-scale carbon capture pipeline system spanning approximately 1,300 miles across five states in the Midwest that will capture carbon dioxide from local facilities before it reaches the atmosphere, convert it to a liquid form, and transport it via pipeline to a permanent underground sequestration site and/or off-take facilities in Iowa for commercial/industrial use. This pipeline system, called or generally referred to as the Heartland Greenway Project, will be capable of transporting liquefied carbon dioxide from initial receipt points at emissions capture facilities in Iowa, Illinois, Minnesota, Nebraska, and South Dakota to an initial sequestration site identified in Illinois and/or off-take facilities in Iowa for commercial/industrial use. It is a forward-thinking, scalable infrastructure investment that will materially reduce participating industrial facilities’ carbon footprints and further the global goal of carbon neutrality.

In Iowa, the IUB has primary jurisdiction over the siting of hazardous liquids pipelines, like the Heartland Greenway Project, and a company proposing to build such a pipeline must obtain a permit from the Board under Iowa Code chapter 479B.<sup>1</sup> Pursuant to Iowa Code chapter 479B and the Board's administrative rules implementing the statute, 199 Iowa Administrative Code chapter 13, the first step in seeking a permit for a carbon capture infrastructure project of this nature is to hold a public informational meeting in each county where the pipeline is proposed to be constructed and operated, and notice of these meetings must be sent via certified mail to "persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements." 199 Iowa Admin. Code 13.2(5) (implementing Iowa Code § 479B.4). Notably, however, nothing in the statute nor the Board's rules requires or contemplates public filing of the list of persons on which the mailing was based.

While mailing lists are not required under chapter 479B of the Iowa Code or the IUB's administrative rules, the Board entered orders on December 16, 2021 and December 28, 2021 in all of its then-open hazardous liquid pipeline dockets, requiring hazardous liquid pipeline companies, including Navigator, to file their mailing lists. (The December 16 and December 28 orders are attached hereto as Exhibit 2 and Exhibit 3, respectively.) However, the December 16, 2021 order expressly allowed for the confidential treatment of the lists and the December 28, 2021 order confirmed that the Board would "withhold from public inspection all materials subject to such request" until a final ruling from the Board, which would come after other litigation was

---

<sup>1</sup> Navigator's proposal is pending before the Board in Docket No. HLP-2021-0003. *See* Iowa Utilities Board, *In re: Navigator Heartland Greenway LLC*, Docket No. HLP-2021-0003, available at <https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0003>.

resolved.<sup>2</sup> Accordingly, pursuant to and in reliance on the protections assured in the Board's orders, on December 30, 2021 and August 22, 2022, Navigator filed its mailing lists together with Applications for Confidential Treatment, as permitted under the Board's rules and consistent with the Iowa Open Records Act.

On August 24, 2022, Navigator received a letter from the Board, informing Navigator that the IUB had been sent a series of public records requests, pursuant to Iowa Code chapter 22, from multiple parties demanding the release of the full landowner lists. Despite the December 28, 2021 order stating that all mailing list materials filed by Navigator would be held confidential, the Board instead said that, pursuant to the provisions of IUB rules 1.9(5) and 1.9(8), it would withhold the informational meeting mailing lists from public inspection for a period of 14 days, starting from August 24, 2022, to allow Navigator the opportunity to obtain injunctive relief in a District Court of the State of Iowa to prevent the disclosure of these materials, or such portion of the materials as may be designated by the Court. Consequently, Navigator initiated this action to protect its mailing lists and the privacy of the landowners potentially affected by the Heartland Greenway Project. The injunction requests is warranted and appropriate.

## **II. Factual Background**

To comply with the good-faith requirements of Iowa Administrative Code 199 - 13.2(5)(d) to locate the addresses of all affected persons on its proposed route, Navigator has taken—and continues to take—a number of complex, time-consuming steps; the process involved significant resources and goes well beyond merely obtaining a list of landowners from each county.

---

<sup>2</sup> The litigation referenced in the December 28, 2021 IUB order is Polk County, Iowa Case No. CVCV062900. Notably, Summit Carbon Solutions filed an appeal and supersedeas bond, thus staying the District Court's order with the Iowa Supreme Court, on September 2, 2022.

First, Navigator engaged Universal Field Services LLC (“UFS”), who obtained assessor’s office information for the parcels in the notification corridor in each of the following counties: Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Cedar, Cherokee, Clay, Clinton, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Hamilton, Hardin, Iowa, Jasper, Jefferson, Keokuk, Kossuth, Lee, Linn, Lyon, Mahaska, O’Brien, Osceola, Plymouth, Pocahontas, Polk, Poweshiek, Story, Van Buren, Wapello, Webster, and Woodbury (the “Counties”).

UFS obtained the information from a third party, Real Estate Portal USA, who purchases, aggregates, and distributes assessor’s office information to its clients, including UFS. Consequently, Navigator’s mailing lists are derived from lists available on a subscription-only basis. After obtaining the assessor’s office information from Real Estate Portal USA, UFS performed a data gap analysis, and any parcels that had data missing were reviewed and the missing data was filled in, wherever possible, by an employee of UFS.

To identify the name and addresses of the persons listed on the tax assessment rolls as responsible for payment of real estate taxes for each of the parcels located within the notification corridor in the Counties, Navigator and UFS staff subsequently reviewed the Geographic Information System (“GIS”) websites for the Counties.

Using the information obtained, Navigator then overlaid this tax parcel data on a map showing a proposed center of corridor for the route and selected the tax parcels in the approximate half-mile notification corridor. From these selected tax parcels, Navigator added the owner’s name and address information to the informational meeting mailing list for each county.

In a December 28, 2021 order, the Iowa Utilities Board held that it would “withhold from all public inspection all materials subject to such request for confidential treatment until a final

ruling of the Board,” which will come “after the Polk County District Court rules on the mailing list in Docket No. HLP-2021-0001.” (Dec. 28, 2021 order, Docket No. HLP-2021-0003, at p. 2.) Navigator filed its first set of mailing lists on December 30, 2021 and its second set of mailing lists on August 22, 2022.

Since the initial lists were filed on December 30, 2021, some of the Counties (and landowners listed) are no longer affected by the project. For example, Navigator is no longer proposing to build the project in Benton, Cedar, Clinton, Iowa, Linn, and Poweshiek counties. In addition, in certain other counties the corridor was updated from the first set of lists to the second to include additional landowners. Beyond project-based revisions, the lists are continually updated and revised to include any new information, including information that that is typically not readily available from an assessor’s office, such as information about tenants or persons in possession. Thus, when filed with the Iowa Utilities Board the lists reflect the corridor as of the date and time of filing and many of the individuals listed may never be affected by the project. To date, Navigator estimates it has expended \$3.67 million to develop, update, and maintain the landowner lists for the corridor.

Navigator has strategically determined a project corridor that it believes serves interested customers, maximizes the collective benefit, and minimizes the collective impact of the line. Navigator’s corridor and resulting mailing lists are kept confidential and utilized for sending notices to landowners. Specifically, to date Navigator has used the mailing lists to send the required notice of informational meetings and has sent and anticipates sending survey notices utilizing the same lists. While Navigator desires to obtain 100% voluntary easements for the project, in the event it needs to seek eminent domain, detailed information for each potential parcel over which

eminent domain is sought—including the landowner’s name and address—will be filed publicly with the Iowa Utilities Board in accordance with Iowa Administrative Code 199 - 13.3(1)(h).

At least one other carbon capture pipeline project is proposing to build its pipeline in many of the same counties that Navigator’s project will be located. If Navigator’s mailings lists, from which its project corridor can be discerned, are not kept confidential, any competing pipeline project or any other person could use that information to Navigator’s detriment, causing Navigator competitive and commercial harm.

To date, Navigator’s lists involve over 16,000 records, reflecting the personal information of the owner, tenants, or persons in possession, of each parcel in the notice corridor across 39 Iowa counties, and the affected persons in Navigator’s mailing lists have not been given the opportunity to opt out of the potential disclosure of their personal information.

### **ARGUMENT**

#### **I. The requested records are exempt from disclosure under the Act.**

The Iowa Open Records Act “allows public examination of government records to ensure the government’s activities are more transparent to the public it represents.” *Am. C.L. Union Found. of Iowa, Inc. v. Recs. Custodian, Atl. Cmty. Sch. Dist.*, 818 N.W.2d 231, 232 (Iowa 2012) (citing *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999)). However, the Act itself recognizes that not every record held by a public institution should be disclosed and enumerates over sixty categories of records specifically exempt from disclosure. Iowa Code § 22.7. Two of these exemptions apply here: the lists are entitled to protection as a trade secret, under Iowa Code § 22.7(3), and as a report to a government agency, the release of which would serve no public purpose, under Iowa Code § 22.7(6). Moreover, the Act also creates an equitable remedy independent of the § 22.7 exceptions, that is applicable to prevent disclosure when, like here,



public examination of the records would clearly not be in the public interest and would substantially and irreparably injure any person or persons. Iowa Code § 22.8.

**A. Navigator’s mailing lists are trade secrets under Iowa Code § 22.7(3).**

The Act provides that “trade secrets which are recognized and protected as such by law” are exempt from disclosure and “shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information.” Iowa Code Ann. § 22.7(3). In applying this exemption, courts use the definition for “trade secrets” found in Iowa’s Uniform Trade Secrets Act. *Sysco Iowa, Inc. v. Univ. of Iowa*, 889 N.W.2d 235, 237 (Iowa Ct. App. 2016) (citing *Iowa Film Prod. Servs. v. Iowa Dep’t of Econ. Dev.*, 818 N.W.2d 207, 217 (Iowa 2012)).

The Uniform Trade Secrets Act defines a “trade secret” as “information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process” that both (a) “[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use” and (b) “[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Iowa Code § 550.2(4).

The economic value inquiry under this definition requires a court “to consider whether the information at issue ‘protects the owner’s competitive edge or advantage.’” *Iowa Film Prod. Servs.*, 818 N.W.2d at 222 (quoting *U.S. W. Commc’ns, Inc. v. Off. of Consumer Advoc.*, 498 N.W.2d 711, 714 (Iowa 1993)). “Thus, information kept secret that would be useful to a competitor and require cost, time and effort to duplicate is of economic value.” *U.S. W. Commc’ns, Inc.*, 498 N.W.2d at 714 (citing *Surgidev Corp. v. Eye Tech., Inc.*, 648 F. Supp. 661, 683 (D. Minn. 1986), *aff’d*, 828 F.2d 452 (8th Cir. 1987)). In addition, “the owner must demonstrate the information was ‘unknown to, and not readily ascertainable by, a person who would profit from [its] disclosure or

use.” *Iowa Film Prod. Servs.*, 818 N.W.2d at 222–23 (quoting *205 Corp. v. Brandow*, 517 N.W.2d 548, 550 (Iowa 1994)).

Navigator treats the mailing lists as proprietary, trade secret, and commercially sensitive information which, if released, would give an advantage to competitors and serve no public purpose. First, Navigator’s mailing lists are derived from lists available on a subscription-only basis. Navigator’s lists are also then reviewed, revised, and updated to include information that Navigator and its contractor have obtained since the lists were initially developed. This includes information that may not be available from the county assessor, such as information regarding tenants or other persons in possession.

In addition, Navigator’s project is located in over a dozen counties where another pipeline proposed by Summit Carbon Solutions, LLC (“Summit”)<sup>3</sup> is also located. Revealing Navigator’s mailing list would cause Navigator harm as Summit (or any other carbon capture pipeline applicant) could discern Navigator’s exact corridor, which landowners may be negotiating with Navigator for easements, and how much flexibility Navigator has to move its line within its corridor. Undoubtedly, Summit would claim the same potential for commercial harm if its mailing lists were available to Navigator or any other carbon capture pipeline applicant.

Beyond independent economic value, to qualify as a trade secret, Navigator must also show that the information contained in the mailing lists is the subject of reasonable efforts “under the circumstances to maintain its secrecy.” *See* Iowa Code § 550.2(4)(b). Notably, when filed with the Board, Navigator requested that the mailing lists be treated as confidential. Moreover, Navigator has taken security measures to preserve confidentiality of its mailing lists. In particular, Navigator employees that came into contact with the lists understand that they must not disclose any of the

---

<sup>3</sup> *See* Iowa Utilities Board, *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001, available at <https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0001>.

information contained therein, and Navigator's contractors were required to sign non-disclosure agreements. *See, e.g., Uncle B's Bakery, Inc. v. O'Rourke*, 920 F. Supp. 1405, 1429 (N.D. Iowa 1996); *205 Corp.*, 517 N.W.2d 5 at 551.

The mailing lists clearly have independent economic value and have been kept confidential and, thus, fall squarely within the definition of trade secrets. Indeed, "[t]here is virtually no category of information that cannot, as long as the information is protected from disclosure to the public, constitute a trade secret." *Iowa Film Prod. Servs.*, 818 N.W.2d at 220 (quoting the *U.S. W. Commc'ns, Inc. v. Off. of Consumer Advoc.*, 498 N.W.2d 711, 714 (Iowa 1993)). As stated by the Iowa Supreme Court, "a broad range of business data and facts which, if kept secret, provide the holder with an economic advantage over competitors or others, qualify as trade secrets." *U.S. W. Commc'ns, Inc.*, 498 N.W.2d at 714. The Board itself has recognized that this constitutes a "broad definition of a trade secret." *See, e.g., In Re: Interstate Power & Light Co.*, No. C-2020-0065, 2020 WL 5369042, at \*1 (Sept. 4, 2020); *In Re: Interstate Power & Light Co.*, No. RPU-2019-0001, 2019 WL 4880540, at \*13 (Sept. 30, 2019); *In Re: Interstate Power & Light Co.*, No. EEP-2018-0003, 2018 WL 5086200, at \*2 (Oct. 12, 2018). Accordingly, the mailing lists are a trade secret and must, therefore, be exempt from public examination under Iowa Code § 22.7(3).

Navigator has clearly met the standards noted above for the issuance of a temporary injunction. Navigator rights to keep its trade secrets and mailing lists confidential are clearly threatened by the Open Records Requests, substantial injury will occur unless an injunction is granted to prevent disclosure of this trade secret and otherwise confidential information, and Navigator has no adequate remedy at law. If the lists are disclosed, there is simply no way to unring that bell, as the confidentiality of this trade secret information will be lost. A temporary injunction should immediately issue to prevent this disclosure.

**B. Navigator’s mailing lists also constitute a report to a government agency, the release of which would serve no public purpose, under Iowa Code § 22.7(6).**

A party requesting confidentiality under section 22.7(6) must establish two elements: (1) that the information would give advantage to competitors and (2) the release of the information would serve no public purpose. *Ne. Council on Substance Abuse, Inc. v. Iowa Dep’t of Pub. Health, Div. of Substance Abuse*, 513 N.W.2d 757, 760 (Iowa 1994). The first element may be established if the information “would be useful to [competitors] and would cost [them] money, time, and effort to duplicate.” *Id.* (citing *U.S. West Comms., Inc.*, 498 N.W.2d at 714-15). As set forth above, disclosure of the mailing lists would give advantage to Navigator’s competitors, like Summit. As to the second element, a “public purpose” has generally been found where “public funds were involved” because “the public has a right to know how those funds have been spent—what services were provided for these funds and how efficiently the funds were spent.” *Iowa Film Production Servs.*, 818 N.W.2d at 226 (citing *Ne. Council on Substance Abuse, Inc.*, 513 N.W.2d at 760-61). Such a conceptualization of a “public purpose” does not apply here, where no public funds are involved.

Moreover, as previously mentioned, Navigator’s mailing lists are initially derived from lists available on a subscription-only basis. As a result, the aggregated lists are available only to those who pay for and subscribe to a third-party service. Further, Navigator has only been able to compile these lists at great expense, totaling in the millions of dollars. The Board itself has previously held that confidential information filed with the Board that is only made available to subscribers of a service falls under the Iowa Code § 22.7(6) exemption.<sup>4</sup> *See, e.g., Iowa Utilities*

---

<sup>4</sup> *See, e.g.,* Order Granting Request for Confidential Treatment Filed June 4, 2018, Docket No. RPU-2018-0002, June 27, 2018; Order Granting Applications for Confidentiality Filed November 13 and 22, 2017, December 14 and 20, 2017, January 12 and 26, 2018, February 5 and 19, 2018, Docket No. RPU-2017-0002, April 17, 2018; Order Granting Applications for Confidential Treatment Filed August 25, 2017, and September 12, 2017, Docket No. RPU-2017-0001, September 18, 2017; Order Granting Request for

Board, *In re: Interstate Power and Light Company*, Order Granting Request for Confidential Treatment Filed June 4, 2018, Docket No. RPU-2018-0002 (June 27, 2018); Iowa Utilities Board, *In re: Interstate Power and Light Company*, Order Granting Applications for Confidentiality Filed November 13 and 22, 2017, December 14 and 20, 2017, January 12 and 26, 2018, February 5 and 19, 2018, Docket No. RPU-2017-0002 (April 17, 2018); Iowa Utilities Board, *In re: Interstate Power and Light Company*, Order Granting Applications for Confidential Treatment Filed August 25, 2017, and September 12, 2017, Docket No. RPU-2017-0001 (Sept. 18, 2017).

This exemption is a second and independent reason for the Court to issue a temporary injunction to prevent disclosure of the mailing lists. The standards for a temporary injunction are clearly met, and an injunction should immediately issue to prevent this disclosure.

**C. This case also meets the criteria outlined in Iowa Code § 22.8.**

Iowa Code § 22.8 creates a free-standing cause of action for injunction regarding public records and allows a District Court to grant an injunction in whole or part against the public examination of records if it finds:

- a. That the examination would clearly not be in the public interest; and
- b. That the examination would substantially and irreparably injure any person or persons.

Iowa Code § 22.8(1). Put differently, this section is an equitable remedy independent of the § 22.7 exceptions, that is applicable when the examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. *Burton v. Univ. of Iowa Hosps. & Clinics*, 566 N.W.2d 182, 189 (Iowa 1997) (internal citations omitted). Section 22.8 is

---

Confidentiality Filed June 30, 2015, Docket No. SPU-2015-0017, July 8, 2015; Order Granting Request for Confidentiality Filed October 28, 2013, Docket No. RPU-2013-0004, October 30, 2013; Order Granting Request for Confidentiality Filed September 10, 2013, Docket No. RPU-2013-0004, September 17, 2013.

applicable to the case at hand, is an independent basis for an injunction, and a temporary injunction should issue to prevent disclosure of the lists.

First, the release of the mailing lists is not in the public interest. These requests suggest that the public interest in the release of the mailing lists is solely to allow project opponents to better communicate with potentially affected landowners organize a united response to the Heartland Greenway Project. However, the lists as filed with the IUB have changed, as Navigator's route and landowner/tenant information is continually being refined. As a result, there can be little to no public value in disclosing the names of the individuals on the lists, many of whom may never be affected by the project. Indeed, it would be extraordinary to require disclosure of the identification of unaffected private persons, with physical address information, who have had no interaction with the government agency and where the specific information has no nexus to government funding, a government decision, or the action of a government official. All disclosure would do here is expose unwitting Iowa residents to publicity and disturbance, all while eroding the protection of trade secrets and reports to governmental agencies. Surely, this is not in the public interest.

Second, Navigator would be irreparably harmed by the disclosure of a trade secret: "[a] trade secret once lost is, of course, lost forever." *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 63 (2d Cir. 1984); *see also Rocklin Mfg. Co. v. Tucker*, No. 00-0797, 2001 WL 1658676, at \*2 (Iowa Ct. App. Dec. 28, 2001) (citing *Uncle B's Bakery, Inc.*, 920 F. Supp. at 1435) ("The threat of inadvertent disclosure of trade secrets, and consequently, a threat of irreparable harm may justify the issuance of an injunction."). As stated, there is no un-ringing of this bell once rung.

Third, the landowners on the mailing lists would be irreparable harmed by their disclosure. For example, disclosure of the mailing lists puts the affected landowners at risk for identity theft,

which occurs every twenty-two seconds.<sup>5</sup> If the mailing lists of the affected or potentially affected landowners and tenants are made public, it would not be long before someone unscrupulous could try to take advantage of this information to try to steal a landowner's identity. Navigator considers Iowa landowners its partners and desires to work constructively and collaboratively with them and, for that reason, is unwilling to put any of the landowners on its mailing lists at such risk—particularly where many of the landowners and tenants on the list will never be affected by the project. The invasion of the privacy of these Iowans who are innocent bystanders to the Board's pipeline permit proceeding far outweighs any interests of the requesting parties.

Again, a temporary injunction should immediately issue to prevent this disclosure.

**II. The privacy interests of persons on the mailing lists are entitled to protection under the Iowa Supreme Court's *Clymer* privacy balancing test.**

Finally, as another basis for issuing an injunction, consistent with Iowa law and prior Board precedent, the privacy interests of the affected persons on the mailing lists outweighs any argument for making the lists public. In fact, the Board has repeatedly held as confidential the personal information contained on mailing lists filed with the Board:

[Applicant] asserts the landowners' "personal, specific information should be protected." The Board agrees with this assertion. In *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999), the Iowa Supreme Court recognized a constitutional right of privacy could serve as a basis for holding information confidential. The *Clymer* Court examined, in part, the scope of this privacy interest in the context of a public employee's home address, holding "a public employee has a substantial privacy interest in his or her address that outweighs the public's interest in disclosure, unless the information is necessary to open the government's actions to the light of public scrutiny." *Id.* at 47 (citations omitted). The Board finds this same privacy interest could be implicated with respect to the landowner contact information. Given the minimal interest in public disclosure of this information, the Board finds the request for confidentiality relating to the landowner information to be reasonable and grants confidentiality to the same.

---

<sup>5</sup> National Council on Identity Theft Protection, *2022 Identity Theft Facts and Statistics*, <https://identitytheft.org/statistics/#:~:text=Nearly%20half%20of%20all%20U.S.,we%20become%20more%20digitally%20dependent> (last visited Aug. 30, 2022).

Iowa Utilities Board, *In re: Wapello Solar LLC*, Order Granting Request for Confidential Treatment Filed on August 28, 2019 and Issuing Certificate, Docket No. GCU-2019-0001 (Oct. 24, 2019).

There is no connection between the mailing lists developed by Navigator and “open[ing] the government’s actions to the light of public scrutiny.” *See id.* Though Navigator does not concede that there is a valid public purpose that could outweigh the privacy interests of those on its mailing lists, to the extent individuals, third parties, or advocacy groups want to contact affected persons to collectively oppose the project, multiple alternative options exist beyond revealing the personal information contained in Navigator’s proprietary mailing lists.

For instance, Navigator’s informational meetings, which are still ongoing, provide an opportunity for those opposed to the project to communicate with those affected by the project. At the informational meetings held thus far, individuals have already been obtaining names and contact information from other attendees willing and able to share that information (some have refused to share their information). This has allowed only those landowners interested in sharing their information to opt in to being included on such lists. In addition, social media pages and websites opposing the project include sign-up options, petitions, and the ability to make donations to the advocacy groups who oppose the project.<sup>6</sup>

Further, as pointed out by the majority in the Board’s November 23, 2021 opinion in *In re: Summit Carbon Solutions, LLC*, Docket No. HLP-2021-0001 (the “Nov. 23 Order”), opponents looking for like-minded individuals to oppose the project can start with the Board’s EFS system, where commentators’ names and email addresses are publicly available.

In addition, with [the] comments and objections on file in this docket, parties who want to develop a coalition to resist the application for pipeline permit have a

---

<sup>6</sup> *See, e.g.*, <https://m.facebook.com/NoCCSIowa/>; <https://www.sierraclub.org/iowa/carbon-dioxide-pipelines>.



significant block of similarly interested persons with which to work. Given that there is substantial public interest in the proposed project, landowners and other interested persons who oppose the proposed pipeline are likely to know about the project and opposition to it, and can join the opposition coalition if they choose to do so.

Nov. 23 Order at 7-8. Notably, individuals who file a comment or objection with the Board are given the chance to “opt in” to making their comments and contact information publicly available. In contrast, if the information contained in Navigator’s mailing lists is not kept confidential, the affected persons on the mailing lists—who are on the mailing lists not by choice or by any fault of their own—will be harmed because they will not be afforded a similar choice.

The harm to affected persons if their information is made publicly available should not be taken lightly. Rather than having the chance to “opt in” to potential communications from others, these individuals could receive frequent unwanted communication or, worse, be targeted for not wanting to oppose the pipeline. The converse is true as well—these individuals could face unwanted communication from those supporting the project. In addition, the mailing lists do not distinguish between those on the centerline of the corridor and those adjacent to it. Thus, if the lists are not kept confidential, affected persons who may not ultimately be affected by the project will have their privacy disregarded for no public purpose. There is no reason or justification to force this harm onto the public.

### **CONCLUSION**

Navigator respectfully requests that the Court immediately issue a temporary injunction and ultimately a permanent injunction prohibiting the Board from releasing or disclosing the mailing lists.

WHEREFORE, Plaintiff Navigator Heartland Greenway, LLC respectfully requests the Court grant this Motion, immediately enter a temporary and ultimately a permanent injunction

prohibiting the Board from releasing the mailing lists noted herein, and for such other and further relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

/s/ Brian Rickert

---

Brian P. Rickert, AT0006633  
Samantha C. Norris, AT0009488  
James L. Pray, AT0006318  
Caitlin L. Stachon, AT0013902  
BROWN, WINICK, GRAVES, GROSS, AND  
BASKERVILLE, P.L.C.  
666 Grand Avenue, Suite 2000  
Des Moines, IA 50309-2510  
Telephone: 515-242-2400  
Facsimile: 515-283-0231  
E-mail: [Brian.Rickert@brownwinick.com](mailto:Brian.Rickert@brownwinick.com)  
E-mail: [Samantha.Norris@brownwinick.com](mailto:Samantha.Norris@brownwinick.com)  
E-mail: [Pray@brownwinick.com](mailto:Pray@brownwinick.com)  
E-mail: [Caitlin.Stachon@brownwinick.com](mailto:Caitlin.Stachon@brownwinick.com)

ATTORNEYS FOR PLAINTIFF NAVIGATOR  
HEARTLAND GREENWAY, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 7, 2022, I electronically filed the foregoing with the Clerk of Court by using the Electronic Document Management System, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

/s/ Brooke E. Johnson, Legal Assistant